

ASSEMBLY BILL

No. 1541

Introduced by Assembly Member Keeley

February 26, 1999

An act to amend Section 12926 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1541, as introduced, Keeley. Employment discrimination: religious health care providers.

Existing provisions of the California Fair Employment and Housing Act prohibit various unlawful employment practices and impose certain obligations upon employers with respect to specified employment discrimination and harassment. Existing provisions of the act make it a misdemeanor for employers willfully to fail to maintain certain employment records for at least 2 years. Under existing law, employers subject to the act do not include religious associations and corporations.

This bill would impose a state-mandated local program by limiting the act's exemption for employers that are religious associations or corporations to make the exemption inapplicable to religious corporations or associations, the primary purpose of which is provision of health care, unless that health care is limited to members of the religion that formed the association or corporation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12926 of the Government Code
2 is amended to read:

3 12926. As used in this part in connection with
4 unlawful practices, unless a different meaning clearly
5 appears from the context:

6 (a) “Affirmative relief” or “prospective relief”
7 includes the authority to order reinstatement of an
8 employee, awards of backpay, reimbursement of
9 out-of-pocket expenses, hiring, transfers, reassignments,
10 grants of tenure, promotions, cease and desist orders,
11 posting of notices, training of personnel, testing,
12 expunging of records, reporting of records, and any other
13 similar relief that is intended to correct unlawful
14 practices under this part.

15 (b) “Age” refers to the chronological age of any
16 individual who has reached his or her 40th birthday.

17 (c) “Employee” does not include any individual
18 employed by his or her parents, spouse, or child, or any
19 individual employed under a special license in a nonprofit
20 sheltered workshop or rehabilitation facility.

21 (d) “Employer” includes any person regularly
22 employing five or more persons, or any person acting as
23 an agent of an employer, directly or indirectly, the state
24 or any political or civil subdivision thereof, and cities,
25 except as follows:

26 (1) “Employer” does not include a religious
27 association or *religious* corporation not organized for
28 private profit, *unless the primary purpose of the religious*
29 *association or religious corporation is the provision of*
30 *health care and that health care is not restricted to*

1 *members of the religion that established the association*
2 *or corporation.*

3 (2) “Employer,” for purposes of provisions defining
4 unlawful employment practices related to mental
5 disability, means any person regularly employing 15 or
6 more persons, or any person directly or indirectly acting
7 as an agent of such an employer, and also includes the
8 state and municipalities and political subdivisions of the
9 state.

10 (e) “Employment agency” includes any person
11 undertaking for compensation to procure employees or
12 opportunities to work.

13 (f) “Essential functions” means the fundamental job
14 duties of the employment position the individual with a
15 disability holds or desires. “Essential functions” does not
16 include the marginal functions of the position.

17 (1) A job function may be considered essential for any
18 of several reasons, including, but not limited to, any one
19 or more of the following:

20 (A) The function may be essential because the reason
21 the position exists is to perform that function.

22 (B) The function may be essential because of the
23 limited number of employees available among whom the
24 performance of that job function can be distributed.

25 (C) The function may be highly specialized, so that the
26 incumbent in the position is hired for his or her expertise
27 or ability to perform the particular function.

28 (2) Evidence of whether a particular function is
29 essential includes, but is not limited to, the following:

30 (A) The employer’s judgment as to which functions
31 are essential.

32 (B) Written job descriptions prepared before
33 advertising or interviewing applicants for the job.

34 (C) The amount of time spent on the job performing
35 the function.

36 (D) The consequences of not requiring the incumbent
37 to perform the function.

38 (E) The terms of a collective bargaining agreement.

39 (F) The work experiences of past incumbents in the
40 job.

1 (G) The current work experience of incumbents in
2 similar jobs.

3 (g) “Labor organization” includes any organization
4 that exists and is constituted for the purpose, in whole or
5 in part, of collective bargaining or of dealing with
6 employers concerning grievances, terms or conditions of
7 employment, or of other mutual aid or protection.

8 (h) “Medical condition” includes (1) genetic
9 characteristics, or (2) any health impairment related to
10 or associated with a diagnosis of cancer, for which a
11 person has been rehabilitated or cured, based on
12 competent medical evidence. For purposes of this
13 section, “genetic characteristics” means any scientifically
14 or medically identifiable gene or chromosome, or
15 combination or alteration thereof, that is known to be a
16 cause of a disease or disorder in a person or his or her
17 offspring, or is determined to be associated with a
18 statistically increased risk of development of a disease or
19 disorder, or inherited characteristics that may derive
20 from the individual or family member, that is presently
21 not associated with any symptoms of any disease or
22 disorder.

23 (i) “Mental disability” includes any mental or
24 psychological disorder, such as mental retardation,
25 organic brain syndrome, emotional or mental illness, and
26 specific learning disabilities. However, “mental
27 disability” does not include conditions excluded from the
28 federal definition of “disability” pursuant to Section 511
29 of the Americans with Disabilities Act of 1990 (42 U.S.C.;
30 Sec. 12211). Additionally, for purposes of this part, the
31 unlawful use of controlled substances or other drugs shall
32 not be deemed, in and of itself, to constitute a mental
33 disability.

34 (j) “On the bases enumerated in this part” means or
35 refers to discrimination on the basis of one or more of the
36 following: race, religious creed, color, national origin,
37 ancestry, physical disability, mental disability, medical
38 condition, marital status, sex, or age.

39 (k) “Physical disability” includes, but is not limited to,
40 all of the following:



(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits an individual's ability to participate in major life activities.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Being regarded as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2).

(4) Being regarded as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

It is the intent of the Legislature that the definition of "physical disability" in this subdivision shall have the same meaning as the term "physical handicap" formerly defined by this subdivision and construed in *American National Ins. Co. v. Fair Employment & Housing Com.*, (1982) 32 Cal.—3d 603. However, "physical disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (~~Public Law~~ (P.L. 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability,

1 as defined in subdivision (i) or (k), or would include any
2 medical condition not included within those definitions,
3 then that broader protection or coverage shall be deemed
4 incorporated by reference into, and shall prevail over
5 conflicting provisions of, the definitions in subdivisions
6 (i) and (k).

7 (m) “Reasonable accommodation” may include either
8 of the following:

9 (1) Making existing facilities used by employees
10 readily accessible to, and usable by, individuals with
11 disabilities.

12 (2) Job restructuring, part-time or modified work
13 schedules, reassignment to a vacant position, acquisition
14 or modification of equipment or devices, adjustment or
15 modifications of examinations, training materials or
16 policies, the provision of qualified readers or interpreters,
17 and other similar accommodations for individuals with
18 disabilities.

19 (n) “Religious creed,” “religion,” “religious
20 observance,” “religious belief,” and “creed” include all
21 aspects of religious belief, observance, and practice.

22 (o) “Sex” includes, but is not limited to, pregnancy,
23 childbirth, or medical conditions related to pregnancy or
24 childbirth.

25 (p) “Undue hardship” means an action requiring
26 significant difficulty or expense, when considered in light
27 of the following factors: (1) the nature and cost of the
28 accommodation needed, (2) the overall financial
29 resources of the facilities involved in the provision of the
30 reasonable accommodations, the number of persons
31 employed at the facility, and the effect on expenses and
32 resources or the impact otherwise of these
33 accommodations upon the operation of the facility, (3)
34 the overall financial resources of the covered entity, the
35 overall size of the business of a covered entity with
36 respect to the number of employees, and the number,
37 type, and location of its facilities, (4) the type of
38 operations, including the composition, structure, and
39 functions of the work force of the entity, and (5) the



1 geographic separateness, administrative, or fiscal
2 relationship of the facility or facilities.

3 SEC. 2. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

